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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
ILLINOIS BELL TELEPHONE )  
COMAPNY, )  
 )  
Complainant, )  
 )  
vs. ) No. 04-0606  
 )  
1-800-RECONEX, INC., et al. )  
 )  
Respondents. )

Chicago, Illinois  
December 19th, 2005

Met, pursuant to notice, at 11:00 a.m.

BEFORE:  
  
Ms. Eve Moran, Administrative Law Judge

APPEARANCES:  
  
MR. MARK ORTLIEB  
225 West Randolph Street, Suite 2500  
Chicago, Illinois 60606  
(312) 727-2415  
for SBC Illinois;

1 APPEARANCES CONT'D:

2 MS. STEFANIE GLOVER  
MR. MIKE LANNON  
3 160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
4 (312) 793-8185  
for Staff.

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I N D E X

			Re-	Re-	By
<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None so marked.		

1 JUDGE MORAN: Pursuant to the direction of the  
2 Illinois Commerce Commission, I call Docket 04-0606.  
3 This is Illinois Bell Telephone Company versus  
4 1-800-RECONEX, Inc., et al. It is a complaint  
5 pursuant to Section 10-108 of the Illinois Public  
6 Utilities Act; that's 220 ILCS 5-10-108 and 83  
7 Illinois Administrative Code Section 200.170.

8 May I have the appearances for the  
9 record, please.

10 MR. ORTLIEB: For SBC Illinois, Mark Ortlieb,  
11 225 West Randolph Street, Suite 2500, Chicago,  
12 Illinois 60606.

13 MS. GLOVER: On behalf of Staff, Stefanie  
14 Glover and Mike Lannon, 160 North LaSalle Street,  
15 Suite C-800, Chicago, Illinois 60601.

16 JUDGE MORAN: Okay. Let the record reflect  
17 that there are no other appearances and that notice  
18 has properly gone out with respect to this emergency  
19 matter. I have, at this default stage of the  
20 proceedings, some questions and some requests of the  
21 parties. I got a -- I sent out a notice asking for a  
22 statement or a filing by SBC as to all facts that it

1 is asking be deemed admitted pursuant to Commission  
2 rule. I indicated in that notice that Staff could or  
3 should work with SBC to make sure that everything is,  
4 in fact, correctly stated.

5 I received a phone call from Staff  
6 counsel indicating that there may be some problem  
7 with that ruling, and I'd like to hear what that  
8 problem may be. I didn't -- we didn't -- I didn't  
9 want to pursue it by telephone.

10 MS. GLOVER: Oh, okay. I thought I explained  
11 it. I did call and, as I told Mark, I called to see  
12 if it was something that your Honor thought should be  
13 covered in brief. It was a little unclear as to --  
14 you said Staff should work with SBC from the notice  
15 that was sent out -- what precisely you had in mind.

16 JUDGE MORAN: Okay. The -- when you're asking  
17 for facts to be admitted, you need a presentation of  
18 what those facts are so that the trier of fact can  
19 look at those facts and make a determination whether,  
20 in fact, they are sufficiently well pled to state a  
21 cause for relief.

22 MS. GLOVER: That might be the source of my

1       confusion, your Honor.

2               JUDGE MORAN:   Okay.

3               MS. GLOVER:   Because, as I understood it, we  
4       were -- it was a default motion that was before you.

5               THE COURT:   Okay.

6               MS. GLOVER:   And that we would be essentially  
7       taking all the allegations as true without a ruling  
8       on the merits as a -- you know, as if -- if the  
9       default was to be granted.

10              JUDGE MORAN:   Well, I don't understand what you  
11       would have a default on if you didn't -- if there  
12       wasn't -- if these facts did not state a case.  I  
13       don't understand -- see to me, in my mind, they're  
14       linked.

15              MS. GLOVER:   To me there's a distinction --

16              JUDGE MORAN:   Okay.

17              MS. GLOVER:   -- as much as there would be  
18       between, you know, just a ruling of a pleadings on a  
19       motion -- you know, a motion on the pleadings versus  
20       a summary judgment motion.  If it's default judgment,  
21       we -- you know, I would argue that we wouldn't want  
22       or need -- need or want to look at the merits of the

1 facts as pled because it's kind of a punitive relief,  
2 you just accept what is within the four corners of  
3 the pleading as true, grant it -- or rule on it  
4 without, you know, a hearing on the merits of what's  
5 pled. So I think that might be the source of  
6 confusion.

7 JUDGE MORAN: Okay. You're not -- under the  
8 rule, the rule requires that if a party doesn't do a  
9 certain thing, those facts will be admitted against  
10 them. I need to know what those facts are to be  
11 admitted against the CLECs.

12 MS. GLOVER: Procedurally, I mean, this  
13 presents an odd case because it is a default motion  
14 and that's kind of what I was looking for. If  
15 there's some issue with how defaults work, you know,  
16 as pled within our rules --

17 JUDGE MORAN: Okay.

18 MS. GLOVER: -- we maybe should brief it or  
19 discuss it because I'm not quite sure how we would  
20 want to go about ruling on a default motion, which is  
21 quite separate and distinct from a ruling on the  
22 merits if we were to proceed with the presentation of

1 facts.

2 JUDGE MORAN: Well, the thing is, you can't  
3 have an order of default unless you know --

4 Do you have something to say?

5 MS. GLOVER: Well, yeah, if the issue is -- if  
6 your concern is that, you know, the complaint that  
7 you have before you doesn't have the facts within  
8 that -- the four corners of that complaint that would  
9 allow you to make the ruling that you want to make,  
10 then, perhaps, it should be amended so that the  
11 complaint itself would have the facts that you seek  
12 to rule upon.

13 JUDGE MORAN: That's my second point. My  
14 second point is that there is a Supreme Court rule  
15 that -- and if you can hold on a minute.

16 But these are two different things  
17 entirely.

18 Number one, I'd like to know what are  
19 the facts in the complaint that are being admitted --  
20 or that SBC is proposing be admitted, let's put it  
21 that I way. It may be -- it may be a flaw in SBC's  
22 pleading that they have not set out those facts. My

1 concern is that we are here at the end, I'm trying to  
2 get a proposed order out at the end of the year, and  
3 I want to at least get the facts that we're both --  
4 that both parties are agreeing on should be admitted.  
5 That doesn't mean -- you're not taking the next step  
6 of determining whether those facts are sufficient.  
7 That's my job. Okay.

8 But I want you just to agree what are  
9 those facts since you are supporting a motion for  
10 default. What are those facts admitted under the --  
11 that would be admitted under the Commission rules?

12 MS. GLOVER: Okay. So when you're --

13 JUDGE MORAN: You're not giving legal credence  
14 to those facts at this point.

15 MS. GLOVER: Okay.

16 JUDGE MORAN: Can I -- can I make that  
17 distinction clear?

18 MS. GLOVER: The distinction is, your Honor, is  
19 when you're saying "admission of facts," you're  
20 saying --

21 JUDGE MORAN: I don't want SBC to put something  
22 in about Bugs Bunny that you don't agree with because

1     it wasn't in the complaint. That's all. We're  
2     making this too big.

3             MS. GLOVER: Well, perhaps, we could -- so  
4     we're talking about --

5             JUDGE MORAN: If you -- if Staff doesn't want  
6     to be involved in this at all, I can do it just by  
7     having SBC do it. I just thought it would be easier  
8     and it might cut out a problem, but evidently...

9                     SBC do you understand?

10            MR. ORTLIEB: Right. And I do understand. And  
11     I don't -- actually, as I hear this colloquy, your  
12     Honor, between yourself and Staff counsel, I'm not  
13     sure there is even a disagreement between what you're  
14     saying and what Staff's position is; but the  
15     commonality that I hear and what I understand you  
16     seeking is a concise restatement of the facts that we  
17     set forth in our complaint.

18            JUDGE MORAN: Right.

19            MR. ORTLIEB: And it is those facts that will  
20     be -- pursuant to Commission rule, will be deemed to  
21     be admitted --

22            JUDGE MORAN: Right.

1           MR. ORTLIEB:  -- by the defendants --

2           JUDGE MORAN:  Right.

3           MR. ORTLIEB:  -- right?

4                       And then the next step -- which SBC,

5   Staff are not going to be involved in -- is the

6   Commission's determination as to whether those facts

7   admitted as they will be set forth a cause of action

8   upon which relief can be granted.  And if -- you

9   know, of course it's SBC theory that it does, and if

10   it does then --

11          JUDGE MORAN:  Or whether they're pled enough to

12   support a theory in the case.

13          MR. ORTLIEB:  Right.

14          JUDGE MORAN:  Okay.

15          MR. ORTLIEB:  Fair enough.  So my job is -- to

16   summarize it here --

17          JUDGE MORAN:  Exactly.

18          MR. ORTLIEB:  -- is simply to go back through

19   the pleadings and to --

20          JUDGE MORAN:  Exactly.

21          MR. ORTLIEB:  -- make a list format.

22          JUDGE MORAN:  These are the facts to be

1       admitted, one, two --

2               MR. ORTLIEB:   Right.

3               JUDGE MORAN:   -- three, four, five.

4               MR. ORTLIEB:   Right.

5               JUDGE MORAN:   And I'm just having Staff look at

6       that so at least we can be on the same page and I

7       don't have to have a disagreement with Staff as to

8       one, two, three, four, five that is being alleged and

9       SBC's asking to be admitted.

10              MS. GLOVER:   Okay.  I think we're on the same

11      page, your Honor.

12              JUDGE MORAN:   Okay.

13              MR. LANNON:   Your Honor, just so I'm clear,

14      would SBC prepare this and then we would review it?

15              JUDGE MORAN:   That's right.

16              MR. LANNON:   Okay.

17              MR. ORTLIEB:   And -- well, to that point, I'm

18      quite happy to --

19              JUDGE MORAN:   And I only --

20              MR. ORTLIEB:   -- share that with Staff.

21              JUDGE MORAN:   -- do that -- excuse me -- so

22      that I can speed up the work.

1           MR. ORTLIEB:   Mm-hmm.

2           JUDGE MORAN:   I mean, if you don't want to do  
3   it, then you can address it in a brief on exceptions,  
4   but I'm trying to cut out that.

5           MS. GLOVER:    I understand.

6           JUDGE MORAN:   Facts are fact.

7           MR. ORTLIEB:   And, your Honor, just so I can  
8   get a better handle on how this is to work.  I mean,  
9   ideally I prepare the list of facts, Staff looks at  
10   it and says, yes, that's fine and then we can  
11   characterize that in a final to you?

12          JUDGE MORAN:   Right.

13          MR. ORTLIEB:   If Staff believes that I have  
14   incorrectly stated something, then I assume that the  
15   proper thing to do at that point would be for me to  
16   file what I think is appropriate and then Staff can  
17   file something pointing out where it thinks a problem  
18   exists?

19          JUDGE MORAN:   Correct.  Or you can set out the  
20   statement of facts and Staff can put in its -- its  
21   disagreement on facts.

22          MS. GLOVER:    Your Honor, I don't -- I just want

1 to make it clear for the record. I don't think that  
2 we envision Staff weighing in on -- we certainly will  
3 look to see that if what is -- comes out of this  
4 proceeding, what the facts that are outlined by  
5 SBC -- if those correspond with what's in the  
6 complaint and if it's an adequate representation of  
7 how it's been pled.

8 But I don't -- I want to make it clear  
9 that we're not going to do -- go so far as to, you  
10 know, point out how or why any of the factual  
11 allegations are inaccurate or make any kind of  
12 judgment call as to those factual allegations.

13 JUDGE MORAN: Okay. Then you'll have to do  
14 that on your brief on exceptions.

15 Is that it?

16 MS. GLOVER: No.

17 JUDGE MORAN: What are you all talking about?  
18 I don't understand.

19 MS. GLOVER: Well, again, it goes back to the  
20 point of default motion. I mean, I understand that  
21 your Honor wants the facts to be outlined so that  
22 pursuant to rule you can rule on those facts.

1 JUDGE MORAN: Okay. Let me back up.

2 The motion for default has two things;  
3 it asks for two types of relief. Number one is the  
4 default order. Number two is the remedy on default.  
5 Okay. As I understand it, Staff has agreed to the  
6 motion for default order?

7 MS. GLOVER: Right.

8 JUDGE MORAN: If you agree to that, then you  
9 have to agree -- then you are implicitly agreeing  
10 that there are -- that there has been conduct under  
11 the rules that, number one, would allow all facts to  
12 be admitted, and, number two, that an order can be  
13 entered against the interest of the party?

14 MS. GLOVER: That's correct.

15 JUDGE MORAN: So back to those facts that are  
16 to be admitted --

17 MS. GLOVER: How do we comment on those facts,  
18 you Honor, without making comment on -- as to merit  
19 or as to facts?

20 If there's a dispute as to facts,  
21 won't that necessarily involve a question as to the  
22 merits of the facts themselves?

1 JUDGE MORAN: Well, you've already said grant  
2 the default order.

3 MS. GLOVER: Right, but we've said -- as --

4 JUDGE MORAN: And you did that, I assume, by  
5 looking at the facts?

6 MS. GLOVER: Right. Without making any  
7 judgment or questioning the merits of them as pled.  
8 There are factual allegations in there that we don't  
9 need to or have not made any kind of, you know,  
10 evaluation of. Because it's a default motion it's  
11 not necessary that we do so.

12 And so, if there is going to be some  
13 type of argument or dispute as to if they're laid out  
14 exactly the same way they are in the complaint, it  
15 would be very difficult to -- for Staff to put forth  
16 its judgment as to how well those facts are without  
17 making a determination on the merits, which we're not  
18 prepared to do.

19 That's all that I'm trying to say.  
20 You know, it's -- it would be difficult for us to, as  
21 has been suggested here, come forth with some kind of  
22 commentary on whether the facts are laid out without

1 making some commentary on the merits of the facts as  
2 pled, which, in a default motion, we're not going to  
3 do.

4 THE COURT: Okay. I still need the facts. I'm  
5 going to leave Staff out of it entirely. Okay. SBC  
6 is still bound by that notice and I need that as soon  
7 as possible.

8 MR. ORTLIEB: Yes, your Honor.

9 JUDGE MORAN: Okay. Secondly, in order to  
10 expedite this matter on the best legal basis and  
11 grounds, I want SBC to determine if it needs to amend  
12 its complaint in any way based on the suggested  
13 theories that Staff has raised in its latest filing  
14 in this case.

15 Supreme Court Rule 362 allows a  
16 plaintiff to amend its complaint. The purpose of  
17 Rule 362 is to amend the pleadings to conform to the  
18 evidence presented at trial.

19 In this case, we've not had a trial.  
20 However, through the course of the proceeding, there  
21 has been documentary evidence put in at different  
22 points with different filings. There have been new

1 affidavits. There have been -- and I guess that's  
2 it. I guess there's -- there are new affidavits that  
3 have been put into this case.

4 MS. GLOVER: And new attachments, your Honor.

5 JUDGE MORAN: Pardon me?

6 MS. GLOVER: New attachments --

7 JUDGE MORAN: New attachments. Thank you.

8 MS. GLOVER: -- and form of amends.

9 THE COURT: I leave that question up to SBCI.  
10 If you need -- if you need any case law authority,  
11 I'll give you two Northeast 2nd cites. That's 605  
12 Northeast 2d 544; 686 Northeast 2nd 1119. Those are  
13 both Supreme Court cases.

14 Now, again, with all the different  
15 filings that have been made, a number of different  
16 amendments have become at issue in this case.

17 MR. ORTLIEB: Your Honor, is this now a third  
18 area we're moving into?

19 JUDGE MORAN: Yes.

20 MR. ORTLIEB: I have a question on the second  
21 one.

22 JUDGE MORAN: Okay.

1           MR. ORTLIEB:  What was it in particular about  
2   the Staff surreply?

3           JUDGE MORAN:  There was something in the  
4   Staff's reply that said they -- they tried to  
5   distinguish a case based on its caption.

6           MR. ORTLIEB:  Mm-hmm.

7           JUDGE MORAN:  One of the cases in the  
8   out-of-state --

9           MR. ORTLIEB:  Right.

10          JUDGE MORAN:  -- jurisdictions say that somehow  
11   that gave this Commission -- or that Commission more  
12   authority and somehow that seemed relevant to the  
13   Staff for this case.

14          MR. ORTLIEB:  Mm-hmm.  Okay.  Fair enough.

15          JUDGE MORAN:  I'm not going back to the  
16   complaint as yet, but I'm certain that you are all  
17   there working on that initial complaint.

18                       If Staff -- excuse me.  If SBCI feels  
19   that it needs to amend the complaint to more clearly  
20   establish federal law authority, and if, in fact, it  
21   has relied on that federal law authority throughout  
22   any of its filings in this phase -- that means

1     you're -- you know, your supplemental filings, your  
2     reply filings, your attachments and affidavits and  
3     whatever -- I leave it up to you to decide whether  
4     you need to amend your complaint.

5             MR. ORTLIEB:   Okay.   That helps.   I appreciate  
6     that clarification.

7             JUDGE MORAN:   Okay.   All right.   I'm not, at  
8     this point, saying it's necessary or unnecessary.  
9     I'm just drawing your attention to that.   Okay?

10            MR. ORTLIEB:   Thank you.

11            JUDGE MORAN:   All right.   Now, number three, I  
12     want to talk about the amendments only because I am  
13     very confused as to what amendment is being spoken of  
14     at any particular time.

15                         As I understand it, there's Complaint  
16     Exhibit B, which is the first amendment that was the  
17     springboard for everything else.   Okay?

18            MR. ORTLIEB:   That's correct.

19            JUDGE MORAN:   Following that, there was what I  
20     would call a negotiated amendment.

21            MR. ORTLIEB:   That's true.

22            JUDGE MORAN:   Okay.   That's the amendment that

1       was produced at the end of the collaboratives.

2               MR. ORTLIEB:   Correct.

3               JUDGE MORAN:   Am I correct?

4               MR. ORTLIEB:   Correct.

5               JUDGE MORAN:   Okay.   In one of SBCI's

6       responses, you mention that negotiated amendment, but

7       it doesn't seem to be the pure negotiated amendment.

8       You said something about -- with SBC's changes.

9               MR. ORTLIEB:   Well, here -- yeah, here's --

10              JUDGE MORAN:   I'm very confused.

11              MR. ORTLIEB:   Okay.   I apologize for that.

12       Here's what happened:   As a result of the ten-week

13       collaborative process --

14              JUDGE MORAN:   Right.

15              MR. ORTLIEB:   -- that you set forth --

16              JUDGE MORAN:   Yeah.

17              MR. ORTLIEB:   -- the parties -- you know, that

18       four-page Exhibit B grew to about 30 pages, so it

19       become much more robust.   Most of those 30 pages were

20       agreed-upon language --

21              JUDGE MORAN:   Okay.

22              MR. ORTLIEB:   -- between SBC Illinois and the

1 CLECs that chose to participate; there are about 45  
2 of those.

3 Even though the agreement became more  
4 robust, we addressed issues that were not addressed  
5 in the original Exhibit B, and even those issues that  
6 were addressed in the original Exhibit B, we  
7 addressed in more detail; but we couldn't agree on  
8 all those issues. So there were about 33 disputes;  
9 some minor, some not so minor.

10 JUDGE MORAN: Okay.

11 MR. ORTLIEB: And, your Honor, as is the case  
12 with any arbitration -- because this customarily  
13 happens in every arbitration -- those 33 disputed  
14 issues were captured in the following way: There was  
15 a single document, all the agreed upon text was  
16 showed in normal font. And for the -- but when you  
17 would get to a place of dispute, the CLECs would put  
18 in their proposed language and it would be bolded and  
19 italicized. SBC right after that would have its  
20 version of the language that ought to go in that  
21 spot, that would be bolded and underlined.

22 JUDGE MORAN: Okay. So in this negotiated

1     amendment for this case, you're putting in all the  
2     stuff that was negotiated out of the parties, that  
3     everybody agreed to, and then adding your proposed  
4     language --

5             MR. ORTLIEB:    Correct.

6             MS. GLOVER:    For those 33 issues.

7             JUDGE MORAN:    -- for the remaining items --

8             MR. ORTLIEB:    Exactly right.

9             JUDGE MORAN:    Okay.

10            MR. LANNON:     And dropping.

11            MS. GLOVER:     Correct.   And those are the 33  
12     major and not so major issues referred to.

13            MR. ORTLIEB:    Correct.

14            MS. GLOVER:     And just so we're clear for the  
15     record, this is the amendment that we're talking  
16     about that was attached to your supplemental filing?

17            MR. ORTLIEB:    That's correct.

18            MS. GLOVER:     Okay.

19            MR. ORTLIEB:    As Exhibit 2.

20            MS. GLOVER:     Thank you.

21            MR. ORTLIEB:    That's Exhibit 2.   And so --

22            JUDGE MORAN:     Okay.   And now there's a third

1 amendment that Staff has brought into issue, and  
2 we'll call that the arbitrated amendment.

3 MR. ORTLIEB: Mm-hmm.

4 JUDGE MORAN: Okay. And that is the amendment  
5 that is, what, attached to the final order in the  
6 arbitration?

7 MR. ORTLIEB: No, it's not attached there.

8 JUDGE MORAN: Where is that?

9 MR. ORTLIEB: I'll continue the story as told.  
10 So we had this -- you have this Exhibit 2, right,  
11 with the dueling language for each of those 33  
12 issues. That is the document that is filed in the  
13 arbitration proceeding, okay, and then -- so  
14 however -- over however many months we got an order.

15 And in these arbitration orders, your  
16 Honor, the Commission doesn't go in physically and  
17 create an amendment, you know, selecting some  
18 language and rejecting others. They just produce a  
19 written order opining. And then they leave the  
20 parties to go back a second time, what we call  
21 conforming negotiations. And we all get together and  
22 we literally try to, you know, figure out what the

1 Commission meant.

2 And the result of that conforming  
3 process is an amendment. It is signed by all  
4 parties. And then that is filed for approval with  
5 the Commission.

6 And, in this case, we are filing -- we  
7 haven't done it yet; these are starting to come  
8 in -- but we'll file 45 separate dockets each with  
9 their own negotiated slash arbitrated amendment.

10 So if you were to look where that --  
11 that document now exists --

12 JUDGE MORAN: Okay. Where are you with those  
13 conforming?

14 MR. ORTLIEB: We have received -- we sent  
15 out -- about ten days ago we sent out the 45. Last  
16 week we received in about five or six. We expect to  
17 get -- we have a deadline of December 30th. We  
18 expect to get them all in and all filed by December  
19 30.

20 JUDGE MORAN: Okay. So then is that --

21 MR. ORTLIEB: That's what Staff is referring to  
22 in its surrebuttal is the --

1 JUDGE MORAN: Conforming.

2 MR. ORTLIEB: -- those conformed TRO, TRRO  
3 amendments.

4 JUDGE MORAN: So to clarify what Staff would be  
5 proposing --

6 MS. GLOVER: Your Honor?

7 JUDGE MORAN: -- is the conforming arbitration  
8 amendment --

9 MS. GLOVER: I just want to point out, just to  
10 clarify, in the mention of the conforming TRO, TRRO  
11 amendment, that stems from Docket 05-0442, was first  
12 mentioned by SBCI in its supplemental support. They  
13 mention it for the purpose of saying that they do not  
14 want this to be the amendment posed as a remedy on a  
15 default motion.

16 In our surreply, we mention that -- we  
17 discuss the propriety of imposing this last  
18 negotiated amendment only in the context of out of  
19 the three we discussed, which one would be most  
20 likely to conform with the existing law, rather than  
21 try to or attempt to engage in some kind of analysis  
22 of the amendment as proposed and how it lacks or how

1     it doesn't apply with the TRO, TRRO.

2                     We've stated that the work's been done  
3     in 05-0442, and if we had to, you know, provide an  
4     opinion to your Honor as to which one is most likely  
5     to be in conformance with the law, it's going to be  
6     the one that's been negotiated the most.

7                     So that's what we mentioned in our  
8     surreply, we mentioned in response to what was  
9     proposed by SBC in their supplemental filing.

10                    Now, we also acknowledge within that  
11    surreply that the position of the arbitrated  
12    agreement, the last one we've been discussing, you  
13    know, would be problematic -- with the imposition  
14    would come some problems, mainly that SBCI is opposed  
15    to it and has made that very clear that they would  
16    not want that to be the amendment proposed as a  
17    result of this proceeding. So we mention that.

18                    Again, the surreply is simply stating  
19    that we'd be most comfortable in all things being  
20    equal. We're all aware the amendment proposed was  
21    something that would be the closest to everyone's  
22    understanding of what the law requires. Everyone --

1     you know, interested parties, parties to the  
2     negotiating table, that's as far as we go.

3             JUDGE MORAN:   Okay.   All right.   I have to give  
4     SBC some more work.   What I need, just to clarify  
5     both for myself and for the record at this phase of  
6     the proceeding, is very much everything that you have  
7     told me today, Mr. Ortlieb.

8                     I need a list with identification --  
9     that -- identification means the markings -- and an  
10    explanation of the amendments that were proposed at  
11    each stage on default -- pretty much what you just  
12    told me now.

13                    The first proposed amendment:   How it  
14    has been marked in the record -- and I'll help you  
15    with that.   It's been marked as Exhibit B to the  
16    complaint -- where that amendment originated; where  
17    it stands now.

18                    The next amendment is what we're  
19    terming the negotiated amendment -- it came out of  
20    the collaboratives -- how it's marked in this default  
21    phase.   I think it comes in in your sur- --  
22    supplemental?

1           MR. ORTLIEB: Yeah, it does.

2           JUDGE MORAN: Okay. Indicate that. And then,

3 I guess, you would indicate that it was -- it was the

4 initiating document for the arbitration docket.

5           MR. ORTLIEB: Okay.

6           JUDGE MORAN: Then also do the same for the

7 third amendment -- which is the -- what we'll call

8 the arbitrated amendment -- and give a history of

9 that, and where -- does it appear anywhere?

10          MR. ORTLIEB: No, it does not. It's not in

11 this record. It's not --

12          JUDGE MORAN: And it wouldn't be until December

13 30th -- it wouldn't be available until December 30th?

14          MS. GLOVER: Your Honor, they're available.

15 He's waiting them on signed versions (sic). I mean,

16 he sent them out to all of the CLECs involved, so

17 it's out there. It's just he's -- it's been signed.

18 When it comes in, he's going to file them with the

19 Commission.

20          JUDGE MORAN: How are we going to get that

21 amendment into this record?

22          MR. ORTLIEB: I'm not sponsoring that

1 amendment.

2 JUDGE MORAN: You're not. Well, I understand  
3 that.

4 MR. ORTLIEB: Yeah.

5 JUDGE MORAN: Staff has a copy of that  
6 amendment, though?

7 You do or you don't?

8 Let's go off the record.

9 (Whereupon, a discussion was had  
10 off the record.)

11 JUDGE MORAN: I'm sorry, Mr. Ortlieb, did I  
12 stop you in midsentence?

13 MR. ORTLIEB: Well, no. No. I'm just trying  
14 to -- I have my list here. You wanted me to start  
15 with -- you know, provide you an explanation, sort of  
16 a background on each of these amendments as it  
17 existed. So we start looking --

18 JUDGE MORAN: That's just what you did today --

19 MR. ORTLIEB: Right.

20 JUDGE MORAN: -- today?

21 MR. ORTLIEB: And can I make one clarification,  
22 just to remind you, we start with an Exhibit B.

1 JUDGE MORAN: Right.

2 MR. ORTLIEB: Then there was a revised

3 Exhibit B that incorporated TRRO.

4 THE WITNESS: Right. Okay.

5 MR. ORTLIEB: And then there was --

6 JUDGE MORAN: I understand. Yeah.

7 MR. ORTLIEB: Do you wish me to address both

8 the Exhibit B --

9 JUDGE MORAN: You are right, yeah.

10 MR. ORTLIEB: Okay. I'll do that. Then you

11 told me that you'd like the negotiated amendment on

12 my list, which I'll do that.

13 JUDGE MORAN: Right, which was Exhibit 2.

14 MR. ORTLIEB: Exhibit 2 to SBC's --

15 JUDGE MORAN: That's where my confusion is.

16 MR. ORTLIEB: -- supplemental filing.

17 JUDGE MORAN: We went from A's from B --

18 alphabetical --

19 MR. ORTLIEB: I did that --

20 JUDGE MORAN: -- to --

21 MR. ORTLIEB: -- on purpose.

22 JUDGE MORAN: -- numerical.

1           MR. ORTLIEB: I thought it would help keep  
2 track of it, illustrate the distinction.

3                   Then the fourth one you wanted me to  
4 talk about is this arbitrated amendment --

5           JUDGE MORAN: Right.

6           MR. ORTLIEB: -- right? In terms of, you know,  
7 what it is --

8           JUDGE MORAN: Right.

9           MR. ORTLIEB: -- where it originated and where  
10 it stands now?

11          JUDGE MORAN: Right.

12          MR. ORTLIEB: I can get you all that  
13 information.

14          JUDGE MORAN: That I would want.

15          MR. ORTLIEB: Okay.

16          JUDGE MORAN: Okay.

17          MS. GLOVER: Okay. Your Honor?

18          JUDGE MORAN: Mm-hmm.

19          MS. GLOVER: One more thing.

20          JUDGE MORAN: Sure.

21          MS. GLOVER: We started out with some  
22 discussion as to a list and that Staff would make no

1 comment as to the list and that was when we  
2 understood the list you were seeking to be a  
3 recitation of what was in the complaint. So now do  
4 you want this explanation from SBCI to come in the  
5 form of a list also?

6 Are you looking at that as a factual  
7 admission or some kind of different distinction?

8 JUDGE MORAN: Yeah, a factual recitation.

9 MS. GLOVER: Okay.

10 JUDGE MORAN: Just to clarify, because when  
11 you're reading all these pleadings that we have  
12 relevant to this phase, it is confusing to know what  
13 amendment is being talked about at any one time and I  
14 want to make sure that we're not missing something.

15 MS. GLOVER: Right. Well, in that sense,  
16 Staff's comments make sense as to stuff that's  
17 outside of the complaint; you know, like what's  
18 happened procedurally. If you're going to pull in  
19 facts from just what has transpired throughout this  
20 proceeding, Staff might want to make take a look  
21 at -- we'll make it very clear in some kind of form  
22 that we're not commenting on the factual allegations

1     regarding the dispute between SBC and the CLECs, that  
2     whatever's in the complaint be -- we're making no  
3     comment on.

4                     But it may be that something that  
5     comes out of Mr. Ortlieb's explanation as to how  
6     these amendments were proposed and what they  
7     represent. We may have, you know -- it may be worth  
8     hearing Staff's comments on those types of issues.

9             MR. ORTLIEB: Can I suggest this, that I just  
10    share with you a write-up before I file it?

11            MS. GLOVER: Sure.

12            MR. ORTLIEB: And, you know, if you guys think  
13    it's fine, great, we can say that. If you see some  
14    glitch in it that SBC, you know, couldn't make an  
15    adjustment, then you'd have an opportunity --

16            MS. GLOVER: Oh, right. That sounds -- I mean,  
17    that sounds great and I anticipate it won't be an  
18    issue. But because we did say Staff's out of it --

19            MR. ORTLIEB: Sure.

20            MS. GLOVER: -- I thought I'd bring that up.

21            JUDGE MORAN: Okay. Let me ask Staff one  
22    question here now, too.

1                   At the outset, Staff indicated that  
2     there should be a hearing in this case, I assume, on  
3     the validity of the amendment?

4           MS. GLOVER:   Correct.

5           JUDGE MORAN:   What is Staff's position on that  
6     now -- we're at the end -- because there was nothing  
7     in your final brief that addressed that?

8           MS. GLOVER:   Your Honor, all we've ever -- I  
9     mean, I think we've been -- Staff's been pretty  
10    consistent and just wanting to make it clear that  
11    because this is -- you know, SBC's asking for an  
12    extraordinarily amount of money in this case, the  
13    remedy for default, that if your Honor chooses to  
14    impose the amendment on these defaulting parties,  
15    that there be some kind of qualitative judgment as to  
16    whether the amendment has any, you know, semblance or  
17    relation to the law as it stands.   So we want a  
18    hearing to accomplish that objective.

19                       Now that we had a different --  
20    procedurally have different amendments proposed to  
21    us, all we can do -- because there aren't any other  
22    parties to the table, all we can do is say we are

1 most comfortable with those amendments that have been  
2 subject to give and take and discussion insofar as  
3 those amendments probably most accurately reflect --  
4 and arbitration probably most accurately reflect the  
5 law as it stands. Especial- -- you know, the  
6 arbitrated agreement, obviously, is the, you know,  
7 highest -- has been highest -- subject to highest  
8 scrutiny both by Staff and this Commission. And  
9 that's what we've pointed out.

10 So if there's not going to be a  
11 hearing as to -- my point is that what -- if you're  
12 going to look at the amendments in that way, we're  
13 kind of -- we're okay without having a hearing.

14 JUDGE MORAN: Okay. And I think you might -- I  
15 think I'm also hearing you to say that it would  
16 almost be impossible to do a hearing here when we  
17 have no other parties at the table.

18 MS. GLOVER: That's right. And we -- and by  
19 putting on --

20 JUDGE MORAN: And Staff is not a CLEC?

21 MS. GLOVER: Precisely. And pointing out that  
22 the meaning of the hearing was simply to accomplish

1     that objective, that there needs to be some kind of,  
2     you know, at least contemplation of what -- of  
3     whether or not the amendment is in keeping with the  
4     law.

5             JUDGE MORAN:   Okay.   And then we certainly  
6     could have had a hearing because enough notices went  
7     out informing all of the current CLECs respondents  
8     that we're at this stage, that we're at this critical  
9     stage.

10            Okay.   With that, I also have before  
11    me now about an SBCI's motion to voluntarily dismiss  
12    EGIX Network Services, Inc.; am I correct?

13            MR. ORTLIEB:   That's correct.

14            JUDGE MORAN:   Is there any objection to that  
15    motion to voluntarily dismiss?

16            MS. GLOVER:    No objection.

17            JUDGE MORAN:   Hearing no objection, that motion  
18    to voluntarily dismiss will be granted.   I will  
19    direct the clerk to amend the caption again and the  
20    service list accordingly.

21                           In the course of starting to work on  
22    the proposed order for this case, I realize that

1     there's no need, in my opinion, to have this caption  
2     this long including all the CLECs that have been  
3     dismissed out at a number of stages, a large bulk of  
4     them were dismissed out after the arbitration by  
5     SBC's motion. Again, we have another motion to  
6     dismiss today that was granted.

7                     I'm working toward having the  
8     Commission's final order in this case only reflecting  
9     the caption of those CLECs that are in this  
10    Phase 1 -- or -- yeah, Phase 1 of the proceedings,  
11    which is the default proceeding. And also to have  
12    the service list for this case be pared down to that  
13    group.

14                    I indicated in my ruling that I want  
15    SBC, because I think it is tracking this case most  
16    closely, to work with the Clerk's Office to  
17    accomplish that end.

18                    And you understand that, Mr. Ortlieb?

19                    MR. ORTLIEB: Yes, I do, your Honor.

20                    And to that end, if I just might say  
21    that the list, which we intend to provide to the  
22    Clerk's Office later today, the list will really be

1 the same thing as Attachment B to the supplemental  
2 affidavit of Chris Natiouis (phonetic), which we filed  
3 on -- we filed that on December 1st.

4 JUDGE MORAN: Okay.

5 MR. ORTLIEB: So --

6 JUDGE MORAN: And we'll also make sure that  
7 this EGIX --

8 MR. ORTLIEB: EGIX will be removed from that  
9 list, your Honor.

10 JUDGE MORAN: Great. Okay. Okay. I'm  
11 comfortable that I now have requested everything I  
12 need. I apologize to the parties that we've had to  
13 have these extra sessions, but we're carving out some  
14 new territory here and I just want to make sure that  
15 we do it right and do it in a clear fashion so that  
16 someone that is going to read this order is able to  
17 follow it as best as can be.

18 Are there any proposals or comments  
19 from anybody?

20 MS. GLOVER: Just a question. Do we have a  
21 schedule as to briefs on exceptions and things of  
22 that nature? Did we do that?

1 JUDGE MORAN: I would put that in my proposed  
2 order.

3 MS. GLOVER: Okay.

4 JUDGE MORAN: Now, what did I say, Mr. Ortlieb,  
5 that I'm going to have this --

6 MR. ORTLIEB: The proposed order by the end of  
7 the year.

8 JUDGE MORAN: At the end of the year?

9 MR. ORTLIEB: Yeah.

10 JUDGE MORAN: And then are you proposing a  
11 certain time for briefs on exceptions or...?

12 MR. ORTLIEB: I don't believe --

13 JUDGE MORAN: Maybe I'll just put something out  
14 and then if someone disagrees with it, you can always  
15 file a motion.

16 I think that, you know, we've all  
17 discussed this stuff over and over and over again.  
18 Hopefully -- while I'm going to be putting in a lot  
19 of background information and I will be putting in  
20 your positions as accurately as I can, I'm hoping  
21 that the actual conclusion shouldn't be too long or  
22 too complicated, but you never know.

1           MR. ORTLIEB:  Nothing further here, your Honor.

2           JUDGE MORAN:  Nothing further?

3           MS. GLOVER:  Nothing from Staff.

4           JUDGE MORAN:  Nothing further.  Okay.

5                       With that, I don't know if I should

6  mark the record heard and taken.

7           MR. LANNON:  I believe we've got to put some

8  more facts in.  The list, right?

9           MR. ORTLIEB:  Well, there will be -- yeah, the

10  list of amendments, and so their history.

11          JUDGE MORAN:  The only thing that I would leave

12  the record open for, because that's -- you're just

13  setting out in a different shape --

14          MR. ORTLIEB:  Mm-hmm.

15          JUDGE MORAN:  -- Mr. Ortlieb, what's already in

16  the complaint.  You know, that's not new evidence.

17          MR. ORTLIEB:  Okay.

18          JUDGE MORAN:  The only thing I'm going to leave

19  it open for if you want to in any way amend the

20  complaint.

21          MR. LANNON:  Your Honor?

22          JUDGE MORAN:  Yes.

1           MR. LANNON:   If we could have just a sec.

2           MS. GLOVER:   Your Honor, how did you want to  
3   address the question of the third amendment?

4                        I mean, you just mentioned that it's  
5   not in the record. Did you want that to come from  
6   Staff? Did you --

7           JUDGE MORAN:   I don't think I -- well, I don't  
8   know if I need that third amendment, to tell you the  
9   truth. If the Commission were to go that way, it can  
10   certainly take notice of that amendment.

11                       Your position is based on the fact  
12   that that amendment exists. And for the reasons of  
13   its evolution, so to speak, you're supporting it on  
14   that basis. And I'm satisfied that Staff knows what  
15   that amendment is.

16           MR. LANNON:   Your Honor --

17           JUDGE MORAN:   Mm-hmm.

18           MR. LANNON:   -- you can take administrative  
19   notice if that amendment -- if the conforming  
20   amendment was in any record, but I don't believe it's  
21   in any record right now.

22                        Correct me if I'm wrong, Mark, would

1     it not be in a record until you file the approval  
2     process --

3             MR. ORTLIEB:   Right.

4             MR. LANNON:   -- of a docket?

5             MR. ORTLIEB:   Right.

6             MR. LANNON:   So I'm saying administrative  
7     notice may not work for you because it may not be in  
8     any record at the time you take that notice.

9             JUDGE MORAN:   Okay.  You know what, let's see  
10    what happens and if we need to we can all work on  
11    that during the exceptions briefing, which will be  
12    after December --

13            MR. ORTLIEB:   30th.

14            JUDGE MORAN:   -- 30th.

15            MR. LANNON:   All Staff is recommending --

16            JUDGE MORAN:   Mm-hmm.

17            MR. LANNON:   -- in this regard is just keeping  
18    the record open for now and --

19            JUDGE MORAN:   Okay.

20            MR. LANNON:   -- close it later at some other  
21    time.

22            THE COURT:   And we'll do that.  I will do that.

1                   Okay.  So we're going to continue the  
2   case generally -- or why don't I do -- well...

3           MR. ORTLIEB:  Well, the next thing will be a  
4   proposed order --

5           JUDGE MORAN:  Right.

6           MR. ORTLIEB:  -- by the 30th, that will have  
7   dates in it for briefs --

8           JUDGE MORAN:  Right.

9           MR. ORTLIEB:  -- on exceptions -- or reply  
10   briefs on exceptions.

11          JUDGE MORAN:  Reply on exceptions.

12          MR. ORTLIEB:  Yeah, so, I mean, I don't see a  
13   need to have another --

14          MS. GLOVER:  Do we have a date, your Honor?

15          MR. ORTLIEB:  -- date.

16          JUDGE MORAN:  You know what, let me put a date  
17   in.  Let me put a date like January -- does anybody  
18   have their calendar of January?

19          MR. ORTLIEB:  I do.

20          MS. GLOVER:  Did we establish a date for the  
21   filing that you were seeking?

22                   I mean, do we want to or do we need

1 to?

2 MR. ORTLIEB: Well, I already --

3 JUDGE MORAN: I already have admitted facts by

4 the 20th. Am I going to get them?

5 MS. GLOVER: It's the 2- -- oh, that's right.

6 We do have a day. I'm sorry, the 21st.

7 JUDGE MORAN: Am I getting them?

8 MR. ORTLIEB: They were due Wednesday, but

9 you're saying if we can bump it up a day?

10 JUDGE MORAN: Well, no, if they're due

11 Wednesday, get them to me Wednesday.

12 MS. GLOVER: I forgot about the date, sorry.

13 MR. ORTLIEB: So you're looking for a date in

14 January?

15 JUDGE MORAN: Yeah, in the middle of January --

16 MR. ORTLIEB: Well --

17 JUDGE MORAN: -- just in case we need to --

18 MR. ORTLIEB: January 9th is a Monday.

19 JUDGE MORAN: No --

20 MR. ORTLIEB: January 16th?

21 JUDGE MORAN: -- it will have to be after.

22 The -- around the 15th or the 16th.

1 MR. ORTLIEB: The 16th's a Monday.

2 JUDGE MORAN: All right.

3 MS. GLOVER: That's fine.

4 JUDGE MORAN: January 16th --

5 MR. LANNON: It's a state holiday.

6 JUDGE MORAN: Okay. January 17th, how about

7 that?

8 MS. GLOVER: That's fine.

9 JUDGE MORAN: Good?

10 MS. GLOVER: Mm-hmm.

11 JUDGE MORAN: January 17th, 2006 at -- we'll

12 make it 11:00. And hopefully we won't need to do it.

13 If everything is then addressed, at least the briefs

14 on exceptions we'll know if we need anything else to

15 be put in the record, if not we can mark the record

16 heard and taken --

17 MR. LANNON: Right.

18 JUDGE MORAN: -- at that point. Okay?

19 MR. ORTLIEB: Thank you, your Honor.

20 JUDGE MORAN: All right. So --

21 MR. LANNON: Thank you, your Honor.

22 JUDGE MORAN: -- we're continuing this case to

1     January 17th, 2006.   I thank the parties for their  
2     patience and cooperation in putting all this extra  
3     work into the case, but I deem it necessary.   Okay.  
4     Thank you.

5             MR. LANNON:   Thank you, your Honor.

6                             (Whereupon, the above-entitled  
7                             matter was continued to January  
8                             17th, 2006, at 11:00 a.m.)

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